IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 309 of 2002
with
CIVIL APPLICATION No 4714 of 2003
in
SPECIAL CIVIL APPLICATION No 1154 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURENDRANAGAR DISTRICT PANCHAYAT
Versus
DAHYABHAI AMARSINH

Appearance:
1. LETTERS PATENT APPEAL No. 309 of 2002
MR HS MUNSHAW for Appellant No.
MRS DT SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 03/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The respondent-workman claimed to be in service of the appellant-Panchayat for more than 10 years as a daily wager @Rs.10 per day. On 15.7.1985 by oral order his services were terminated by the Panchayat without issuing any notice or paying retrenchment amount. After terminating his services in the same section where he was serving the Panchayat employed new employees, who were in service, but he was not called. Therefore, after a period of almost 7 years i.e. on 1.6.1992 demand notice was served by him to the Panchayat, which was not at all replied. He, therefore, approached the Labour Commissioner, who by his order dated 20.9.1992 made a reference (LCS) No.273 of 1992 before the Labour Court for deciding the industrial dispute between the parties. The appellant-Panchayat filed reply Ex.11 before the Labour Court contending that the workman on his own stopped coming to work. It is further contended that there is a delay of 7 years in making reference, therefore, only on this ground of delay, the reference was required to be dismissed. It is further contended that the applicant was doing miscellaneous work as and when there was work he was called, therefore, on his own he stopped coming to the work. Thus, therefore, under the provisions of Section 2(m)(bb) of Industrial Disputes Act, 1947 (for short "the Act"), the workman is not entitled for reinstatement in service. It is also contended that the workman had worked in fact in all for 114 days in the year 1982, 63 days in 1983, 124 days in 1984 and only 64 days in 1985. Thus, in one calender year he has not worked for 240 days, therefore, there is no question of reinstating him in service as the Panchayat had not committed any breach of Section 25-F, G and H of the Act.

#. By way of the Ex.4, the workman applied for production of muster roll, salary registers from 1976 to 1986 and seniority list of the workman employed by the Panchayat. The Panchayat had not filed any reply nor had produced any documentary evidence as demanded by the workman before the Labour Court.

#. Before the Labour Court the workman examined himself at Ex.15. In his oral evidence he has stated that he was discharging his duties as daily wager employee for 10 years at the monthly salary of Rs.470/=, but on 15.7.1985 his services were terminated by an oral order without

issuing any notice or paying any retrenchment compensation. After terminating his service, his junior labourer, Dharamsinh Badal is continuing in service. In his cross-examination he has stated that he was working at Leelapur Tanki road along with 10 other workmen and digging land. Nothing further was put to him in cross-examination. On behalf of the appellant-Panchayat, Deputy Executive Engineer, Mr.Vinod Mishra at Ex.17 was examined. He had produced the muster roll at Ex.10 to show that the workman had worked for 114 days in 1982, 64 days in 1983 and after 1985 he stopped coming to work. He has further stated in his oral evidence that as and when work was there he was called for the work and after the work was over he was relieved from the work and the work of the workman was not of permanent nature and no new person was recruited after his services were terminated. He had admitted in his cross-examination that when the workman was removed from service, seniority list of daily wager was not maintained. He has further admitted in his cross-examination that even today working of daily wagers is continued and they are given work for 26 days in a month.

#. Considering the oral evidence led by the workman as well as the appellant-Panchayat and drawing adverse inference against the Panchayat in not producing the muster roll and salary certificate of the appellant-workman from 1976 to 1986 and the seniority list of the workman, the Labour Court by its judgment and award dated 24.7.1999 came to the conclusion that the termination of the workman was clearly in violation of Section 25-F, G and H of the Act and accordingly the termination of the workman was declared bad in law and illegal and he was ordered to be reinstated in services with only 20% back wages, that too from the date of reference i.e. with effect from 20.9.1992 with costs of Rs.250/=.

#. The impugned judgment and award passed by the Labour Court dated 24.7.1999 was challenged by the appellant-Panchayat before this court by way of Special Civil Application No.1154 of 2000 and the learned Single Judge of this court (Coram : D.H.Vaghela, J.) by his judgment and order dated 27.12.2001 dismissed the writ petition. Hence, this Letters Patent Appeal.

#. Learned counsel, Mr.Munshaw for the appellant-Panchayat vehemently submitted that both the Labour Court as well as the learned Single Judge ought to have dismissed the reference of the respondent-workman only on the ground of gross delay of 7 years. In support

of his submission Mr.Munshaw has relied upon the judgment of the Hon'ble Supreme court in case of The Nedungadi Bank Ltd. v. K.P.Madhavankutty and Ors. reported in AIR 2000 SC 839. In Madhavankutty's case (supra), the workman was working with the bank as a Clerk. He had put in 10 years of service. Disciplinary proceedings were initiated against him for misappropriation of Rs.1,185/= and falsifying the books of accounts of the bank. On conclusion of the inquiry, he was served with a memo dated 13.10.1972. Appeal filed by the workman before the Board of Directors of the bank was dismissed on January 30, 1973. Thereafter, after a period of about 7 years, the workman was served notice on the bank through his lawyer calling upon the bank to reinstate him in service on the grounds mentioned in it. In the meanwhile, he filed application before the State Government on 24.5.1979 under Section 10 of the Industrial Disputes Act, which was rejected by the State Government. On 31.10.1980 the workman moved the Assistant Labour Commissioner of the Central Government for relief, who by order dated 11.3.1981 held that there was no scope for formal proceedings under the Act since the matter was one which arose way back in 1972. Aggrieved by the decision of the State Government the workman filed writ petition before the High Court, which was disposed of by an order dated 14.11.1983 with a direction to the Central Government to re-examine the matter. The said order of the High Court was challenged by the bank in appeal, which was upheld by the Division Bench of the High Court. Against which Special Leave Petition was filed before the Hon'ble Supreme Court. While allowing the appeal of the bank, the Hon'ble Supreme Court held that the High Court can exercise its powers under Article 226 of the Constitution of India where there was a gross delay of 7 years and on the peculiar facts of the case, stated hereinabove, the Hon'ble Supreme Court allowed the appeal and set aside the judgment and order passed by the High Court.

#. Coming to the facts of the present case, it is clear that the respondent-workman was petty labourer. He was in service for about 10 years and his services were terminated without following due process of the Industrial Disputes Act. Apart from that the Labour Court has also clearly found in its judgment that Dharamsinh Badal, whose services terminated earlier was also reinstated in the service, but the respondent workman was not reinstated in service. In that view of the matter, after considering the oral evidence and all other relevant circumstances of the case if the Labour Court has come to the conclusion that the delay should

not come in the way of the court in passing the order of reinstatement then certainly this court cannot interfere with such orders. More particularly, when learned Single Judge of this court refused to exercise his writ jurisdiction in the writ petition filed by the appellant-Panchayat before him. In fact, in case of Ajaib Singh v. The Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. reported in AIR 1999 SC 1351 the Hon'ble Supreme Court has held that delay in making the reference can never come in the way of the Labour Court and it cannot throw away the dispute on the ground of delay. At the most the court can mould its relief. In the instant case, from the judgment of the Labour Court, it is clear that it has not awarded back wages from the date of termination i.e. from 1985. It has awarded back wages to the workman only from the date of reference i.e. 20.9.1992 and that too not full back wages only 20% of the back wages was awarded. In such type of cases when the Labour Court exercised its jurisdiction, then on the ground of delay impugned award passed by the Labour Court cannot be set aside.

#. Mr.Munshaw, then submitted that in the instant case the respondent-workman miserably failed to prove that he has worked for 240 days in calender year his oral evidence was not sufficient. He should have led concrete documentary evidence in support of his case. No proof of latest salary receipt, proof showing that he worked for 240 days etc. is produced by the workman, therefore, the labour court committed an error in coming to the conclusion that the workman had worked for 240 days in one year and his services were terminated without following provisions of Industrial Disputes Act, without issuing any notice or paying retrenchment compensation. In support of his submission, Mr.Munshaw relied upon the judgment of the Hon'ble Supreme Court in case of Range Forest Officer vs. S.T.Hadimani reported in JT 2002(2) SC 238. In Hadimani's case (supra) the services of the workman was terminated without paying him any retrenchment compensation as alleged by the workman though he has worked 240 days in one year. However, the Range Forest Officer had not accepted his case and contended that he has not worked for 240 days. The Tribunal by its award dated 10.8.1998 came to the conclusion that the services of the workman was terminated without giving him retrenchment compensation. In arriving at the conclusion that he had worked for 240 days, the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and the affidavit of the

workman was sufficient to prove that he had worked for 240 days in a year. On peculiar facts of that case in Hadimani's case the Hon'ble Supreme Court observed that "In our opinion, the tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. it was the for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman." Thus, on the facts of that case, the Hon'ble Supreme Court quashed and set aside the judgment and award passed by the Labour Court.

#. In nutshell we have already narrated the facts of this case. The instant case was not decided by the Labour Court on the mere affidavit of the workman. In the instant case the workman was examined before the Labour Court and he was duly cross-examined, but nothing substantially has come out in his cross-examination. Not only that the workman under Ex.4 called upon the appellant-Panchayat to produce his salary and muster roll from 1976 to 1986 and also to produce the seniority list of the workman, but the appellant-Panchayat even did not bother to reply to the same nor produced any evidence. Therefore, the Labour Court raised adverse inference against the appellant-Panchayat and held that the oral evidence of the workman was sufficient to come to the conclusion that he had worked for 240 days in a year and, therefore, his services were terminated without issuing notice or without paying retrenchment compensation. Therefore, the termination order was quashed and set aside by the Labour Court.

##. That is not the only ground on which the Labour Court quashed and set aside the termination order of the workman. The Labour Court also found that his junior Dharamsinh Badal whose services were terminated was re-employed in service, but the petitioner was not. Therefore, learned Labour Court held that all the relevant provisions of Industrial Disputes Act were breached by the appellant-Panchayat.

##. In view of the above, we fail to appreciate that how

the judgment of the Hon'ble Supreme Court in Hadimani's case will have any application to the facts of the present case.

##. Except the aforesaid contention no other contention was raised. In view of the above, we do not find any substance or merit in this appeal. Accordingly, it fails and the same is hereby dismissed with costs.

##. Now the appeal is dismissed, therefore, the appellant-Panchayat is directed to implement the impugned judgment and award passed by the Labour Court, which is confirmed by the learned Single Judge of this court in writ petition as early as possible and not later than 3 months from the date of the receipt of this order.

Civil Application No.4714 of 2003 is dismissed of in view of the order passed in main Letters Patent Appeal.

(B.J.Shethna, J.)

(Ravi R. Tripathi, J.)

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